Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Allocation of Spectrum Below 5 GHz Transferred from Federal Governmental Use	)	ET Docket No. 94-32
	)	

PETITION FOR RECONSIDERATION

The Wireless Cable Association International, Inc. ("WCAI"), by its attorneys and pursuant to Section 1.429 of the Commission's Rules, hereby petitions the Commission to reconsider certain limited aspects of the rules promulgated in the *Second Report and Order* ("*Second Report*") in this proceeding.[1/] Specifically, WCAI urges the Commission (i) to utilize Rand McNally & Company ("Rand McNally") Basic Trading Areas ("BTAs") as the geographic area for General Wireless Communications Service ("GWCS") licenses, (ii) to permit all GWCS licensees, not just rural telephone companies, to partition their services areas, and (iii) to amend newly-adopted Section 26.309 to permit GWCS licensees to mount facilities on existing antenna structures higher than 200 feet above ground level without special consent where the tower has already received a "no hazard" determination from the Federal Aviation Administration ("FAA") and will not be increased in height by mounting of the GWCS antenna.

At the outset, the Commission is to be applauded for its decision to reallocate the 4660-4685 MHz band to the new, highly flexible, GWCS. The *Second Report* is correct in

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[1/] *Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use*, FCC 95-319, ET Docket No. 94-32 (rel. Aug. 2, 1995)[hereinafter cited as "*Second Report*"].

concluding that the flexibility inherent in the GWCS will promote research and development and spur deployment of a wide variety of new technologies and services.[2/] That flexibility is critical to the wireless cable industry. As WCAI explained in its initial comments in response to the *Notice of Proposed Rulemaking* and in its further comments in response to the *First Report and Order and Second Notice of Proposed Rulemaking*, its interest in this proceeding stems from the fact that the 4660-4685 MHz band may provide a source of much-needed spectrum for the wireless cable industry.[3/] The Commission has already recognized that wireless cable operators face a severe shortage of channel capacity when compared to their coaxial cable and Direct Broadcast Satellite competition.[4/] Although cost factors make it impractical to utilize the 4660-4685 MHz band for the point-to-multipoint transmission of video programming to wireless cable subscribers, in the future the 4660-4685 MHz band could be employed by wireless cable system operators to provide the return paths that emerging interactive applications will demand.

It may prove essential to the future viability of wireless cable that operators have access to additional spectrum for two-way services. It is a matter of public record that coaxial

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[2/] *See id.* at ¶ 12.

[3/] *See* Comments of Wireless Cable Ass'n Int'l, ET Docket No. 94-32, at 2 (filed Dec. 19, 1994); Further Comments of Wireless Cable Ass'n Int'l, ET Docket No. 94-32, at 2-3 (filed March 20, 1995) [hereinafter cited as "WCAI Further Comments"].

[4/] *See Amendment of Part 74 of the Commission's Rules Governing Use of the Frequencies in the Instructional Television Fixed Service*, 9 FCC Rcd 3360, 3364 (1994); *Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service*, FCC 94-293, MM Docket No. 94-131 and PP Docket No. 93-523, at ¶ 2 (rel. Dec. 1, 1994)[hereinafter cited as "*MDS Auction NPRM*"].

cable system operators are beginning to offer a variety of interactive services and are planning to become significant providers of local exchange service, while local exchange carriers are planning to offer a wide variety of interactive video applications to consumers. The wireless cable industry must have two-way capabilities in order to keep pace.[5/] If the wireless cable industry is denied meaningful access to the spectrum needed to provide two-way services, wireless cable may soon find itself unable to provide the full panoply of services consumers are beginning to demand of multichannel video distributors.

I. THE COMMISSION SHOULD UTILIZE BASIC TRADING AREAS FOR LICENSING GENERAL WIRELESS COMMUNICATIONS SERVICE IN THE 4660-4685 MHZ BAND.

In its comments in response to the *First Report and Order and Second Notice of Proposed Rule Making* in this proceeding, WCAI emphasized the benefits that would be realized by issuing GWCS licenses for relatively small geographic areas while permitting bidders to aggregate adjacent territories.[6/] Thus, WCAI is gratified that the Commission has rejected its initial proposal to utilize Rand McNally Major Trading Areas as the geographic areas for GWCS licensing. However, WCAI disagrees with the decision to instead utilize the

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[5/]While the Commission has allocated a small quantity of spectrum at 2686-2690 MHz for use by wireless cable operators as return paths, it has proven technologically difficult to employ that spectrum because it is directly adjacent to a channel used for the transmission of programming to consumers. The Commission has already acknowledged the interest of wireless cable in securing additional spectrum for the provision of telephone service in competition with the local exchange carriers. *See Rulemaking to Amend Part 1 and Part 21 of the Commission's Rules to Redesignate the 27.5 - 29.5 GHz Frequency Band, to Reallocate the 29.5 -30.0 GHz Band, and to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, FCC 95-230, at ¶ 107 (rel. July 28, 1995)[hereinafter cited as "*LMDS TNPRM*"].

[6/]WCAI Further Comments. at 7-9.

Economic Areas ("EAs") developed by the Department of Commerce's Bureau of Economic Analysis. Simply stated, this decision will seriously prejudice those service providers (including wireless cable operators) that intend to utilize GWCS in conjunction with other services that are licensed on the basis of BTAs.

The benefits of permitting wireless cable operators to incorporate GWCS into their service offerings clearly will be enhanced by establishing GWCS service areas that are co-terminus with the service areas afforded MDS licensees. The Commission has recently determined that it will award future MDS licenses based on BTAs.[7/] EAs and BTAs have substantially different boundaries. Use of any area other than BTAs for the licensing of GWCS will force wireless cable operators to bid for GWCS rights in areas where they cannot use GWCS to provide services complementary to wireless cable. Wireless cable operators are not alone in this regard. Given the wide variety of communications services that have been or soon will be licensed by the Commission utilizing BTAs,[8/] it is difficult to understand why the Commission would move to the inconsistent EA geographic scheme for GWCS.

Substituting BTAs for EAs as the basis for licensing GWCS facilities would be consistent with the primary objectives of using EAs in the first place. For example, the Commission has already found that BTAs, like EAs, are representative of likely local

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[7/] *See Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service*, FCC 95-230, MM Docket No. 94-131, at ¶¶ 34-37 (rel. June 30, 1995)[hereinafter cited as "*MDS Auction Order*"].

[8/] *See id.*; *LMDS TNPRM*, at ¶¶ 82-91; *Amendment of the Commission's Rules to Establish New Personal Communications Services*, 8 FCC Rcd 7700, 7733 (1993)[hereinafter cited as "*PCS Second Report and Order*"].

communications markets.[9/] Because BTAs are generally smaller than EAs, use of BTA would accomplish the Commission's objective of fairness to rural entities and designated entities.[10/] As the Commission has recognized, "by permitting broader participation, smaller service areas may produce a greater degree of technical and service innovation than would be expected from a few large firms."[11/] Yet, as with EAs, adjacent BTAs could be combined by those service providers who demand a more regional scope.[12/] This would yield efficient spectrum utilization. Local service providers could secure authorization for just a single BTA, while those service providers operating on a broader geographic scope could accumulate licenses for multiple BTAs.[13/]

Finally, the *Second Report* suggests that one benefit of utilizing EAs is that it avoids the copyright issues associated with use of Rand McNally's intellectual property. That issue should be of limited concern here, however, for WCAI and Rand McNally have reached an agreement in principle for a blanket license relating to the use of BTAs for GWCS and anticipate executing formal documentation in 7-10 days.

[9/] *See PCS Second Report and Order*, 8 FCC Rcd at 7733.

[10/] *See Second Report*, at ¶ 56. *See also Amendment of the Commission's Rules to Establish New Personal Communications Services*, 9 FCC Rcd 4957, 4988 (1994)[hereinafter cited as "*PCS Memorandum Opinion and Order*"]("[B]y licensing some blocks on a BTA basis, we comply with Congress' directive that we prescribe area designations that promote economic opportunity for a wide variety of applicants, including small businesses, rural telephone companies, and business owned by members of minority groups and women.).

[11/] *PCS Second Report and Order*, 8 FCC Rcd at 7733.

[12/] *See Second Report*, at ¶ 57. *See also PCS Second Report and Order*, 8 FCC Rcd at 7733.

[13/] *See, e.g. PCS Memorandum Opinion and Order*, 9 FCC Rcd at 4988.

II. THE COMMISSION SHOULD PERMIT PARTITIONING OF GWCS SERVICE AREAS.

The *Second Report* recognizes that "partitioning may help provide additional opportunities for small businesses to participate in providing GWCS-based services to customers."[14/] Yet, for reasons that are unstated in the *Second Report*, the Commission has only afforded rural telephone companies the right to partition their service areas.[15/] WCAI urges the Commission to afford all GWCS licensees, not just rural telephone companies, the right to partition GWCS service areas.

This matter is of particular import to the wireless cable industry. As noted above, wireless cable's ability to utilize the GWCS will be enhanced by having GWCS service areas that are co-terminus with MDS service areas. When the Commission recently amended its MDS licensing rules to employ BTAs as the primary basis for MDS licensing, it authorized BTA authorization holders to partition their service areas, creating so-called Partitioned Service Areas.[16/] Permitting GWCS licensees to partition their service areas in similar fashion will provide wireless cable operators a mechanism for developing GWCS and MDS service areas with common boundaries.

The benefits of permitting partitioning will be felt beyond the wireless cable community. As the Commission has recognized, not only does partitioning speed service to the public by spreading construction responsibilities among multiple licensees, but also

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[14/] *See Second Report*, at ¶ 105.

[15/] *See id.*

[16/] *See MDS Auction Order*, at ¶¶ 46-47.

"geographic partitioning is a method for the original licensee to recoup some of its initial licensing and construction costs, while providing a method for entities with specific local concerns of insufficient capital to purchase rights on the entire service area to acquire a portion of the geographic area originally licensed."[17/] While rural telephone companies should certainly be permitted to enjoy the benefits of partitioning GWCS service areas, there is no sound policy rationale that justifies limiting those benefits solely to rural telephone companies. Thus, WCAI urges the Commission to do with GWCS as it has recently proposed to do with respect to the Local Multipoint Distribution Service, and permit all licensees the freedom to partition their service areas.[18/]

III. THE COMMISSION SHOULD PERMIT GWCS LICENSEES TO MOUNT FACILITIES ON EXISTING ANTENNA STRUCTURES HIGHER THAN 200 FEET ABOVE GROUND LEVEL WHERE THE TOWER HAS ALREADY RECEIVED A "NO HAZARD" DETERMINATION FROM THE FAA AND WILL NOT BE INCREASED IN HEIGHT BY MOUNTING OF THE GWCS ANTENNA.

Under newly-adopted Section 26.309(a), no GWCS antenna structure, including radiating elements, tower, supports and all appurtenances, may be higher than 200 feet above ground level without prior Commission approval. An exception to the prior Commission consent requirement is provided under Section 26.309(c) for GWCS station antennas that are no more than 10 feet above any natural object or existing manmade structure, other than an antenna structure. WCAI urges the Commission to amend Section 26.309 to permit GWCS licensees to mount facilities on existing antenna structures higher than 200 feet above ground

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[17/] *LMDS TNPRM*, at ¶ 89.

[18/] *See id.* at ¶90.

level without prior consent where the tower has already received a "no hazard" determination from the FAA and will not be increased in height by mounting of the GWCS antenna.[19/]

WCAI certainly understands that the Commission would not want to permit any increase in the height of an antenna structure without prior Commission consent. However, it is unclear what public interest is served by requiring a GWCS licensee to secure Commission consent when it intends to mount a GWCS antenna below the top of an antenna structure, but more than 200 feet above ground level. Such an antenna mount poses no increased hazard to air navigation -- the rationale behind Section 26.309 in the first place -- as it does not increase the overall height of the structure. Requiring consent under such circumstances will merely increase the cost to the GWCS licensee, impose an unnecessary processing burden on the Commission, and delay the introduction of GWCS offerings to the public. Therefore, the Commission should permit the mounting of a GWCS antenna on any antenna structure that has received an FAA determination of no hazard to air navigation, so long as the antenna will not increase the overall height of the structure.

WHEREFORE, for the foregoing reasons, WCAI urges the Commission to amend the rules adopted in the *Second Order* in the manner proposed above so as to assure that the

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[19/]The Commission is considering in WT Docket No. 95-5 a proposal under which all antenna towers would be registered with the Commission by the structure owner. *See Streamlining the Commission's Antenna Structure Clearance Procedure and Revision of Part 17 of the Commission's Rules Concerning Construction, Marking, and Lighting Structures*, 10 FCC Rcd 2771 (1995). If that proposal is adopted, the Commission should amend Section 26.309 to permit GWCS licensees to mount facilities on existing antenna structures higher than 200 feet above ground level without prior consent where the tower has been registered with the Commission and will not be increased in height by mounting of the GWCS antenna.

4660-4685 MHz band can be used by wireless cable system operators to introduce innovative new services to the public.

Respectfully submitted,

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